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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,327	08/01/2005	Hong Linh Truong	CH920020023US1	9108
68168	7590	09/29/2009	EXAMINER	
MICHAEL BUCHENHORNER, P.A. 8540 SW 83 STREET SUITE 100 MIAMI, FL 33143		KASSA, ZEWDU A		
		ART UNIT		PAPER NUMBER
		2611		
			NOTIFICATION DATE	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/519,327	TRUONG ET AL.	
	Examiner	Art Unit	
	ZEWDU KASSA	2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 17 July 2009.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,21,22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

1. This office action is in response to communication filed on 7/17/2009.

Claims 1 and 21-22 are independent and pending in this application.

2. Applicant's arguments filed on 7/17/2009 have been fully considered but they are not persuasive.

Response to Remarks

3. Regarding claims 1, 21, 22, applicants asserts that, Varma in view of Mahany and Admitted Prior Art (APA) failed to disclose the limitation "three or more but less than ten transmissions" (Remarks, Page 5 second paragraph).

Examiner respectfully disagrees.

Varma in view of Mahany and APA teaches, "three or more but less than ten transmissions" (Varma, Fig. 5 item S502, Wherein Varma does not explicitly teach three or more but less than ten, Admitted prior art (APA) suggests – see Para [0006]. Furthermore, MPEP states "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In

re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955)). Applicant argument is not persuasive.

Regarding claims 1, 21, 22, applicant asserts that, Varma in view of Mahany and APA fails to teach “wherein the data transmission rate is changed by selecting a new packet length different from an original packet length being used” (Remarks, Page 6 first paragraph).

Examiner respectfully disagrees.

Varma in view of Mahany and APA teaches “wherein the data transmission rate is changed by selecting a new packet length different from an original packet length being used” (Mahany, Abstract, “wide range of operating conditions by adjusting its operating parameters. Such operating parameters include: ... data packet size ... The base transceiver is also responsive ... in determining whether to modify current data packet sizes”). Furthermore it is well known in the art to adjust packet size based on the channel condition -see US 7095719 Abstract, US 20050220117 Para [0046]).

2. Claims 1 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Varma (US 7388919) in view of Mahany (US 5862171) and Admitted Prior Art (APA).

22. As per claim 22, Varam teaches a data communication network comprising: a first node comprising a transmitter comprising a variable data transmission rate (Varma, Fig. 1 item 1, Col 1 L16-22); wherein the transmitter comprises a selecting unit for adapting a variable transmission data rate in a transmitting node of the data communication network to a current link quality of a data communication channel wherein the data rate is selected by the first node from a set of transmission data rates (Varma, Col 1 L16-22 "... dynamic adaptation of link parameters such as modulation scheme, symbol rate ..."); a second node comprising a receiver (Varma, Fig. 1 item 2); and a link connecting the first and second nodes (Varma, Fig. 1 item 3); wherein the first node: operates in a first state in response to detecting a successful transmission of three or more but less than ten transmissions (Varma, Fig. 5 item S502, Wherein Verma does not explicitly teach three or more but less than ten, Admitted prior art (APA) suggests – see Para [0006]. Furthermore, MPEP states "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955)); wherein the first state corresponds to a link with fast changing quality (Varma, Fig. 4 item S402, S403); operates in a second state in response to detecting a successful

transmission of ten or more transmissions (Varma, Fig. 4 item S402 S404, Fig.5 S502, Wherein Verma does not explicitly teach ten or more, Admitted prior art (APA) suggests – see Para [0006]. Furthermore, MPEP states “[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955)); wherein the second state corresponds to a link with slow changing quality (Varma, Fig. 4 item S402 S404, Fig.5 S502); and switching to the first state switches to a state of a lower data transmission rate in response to detecting one or more defective transmissions by a transmitting node in the network operating in the second state (Varma, Fig. 4 item S402 S404, Fig.5 S502);

5. Varma does not explicitly teach wherein the data transmission rate is changed by selecting a new packet length different from an original packet length being used. Mahany teaches wherein the data transmission rate is changed by selecting a new packet length different from an original packet length being used (Mahany, Abstract, “wide range of operating conditions by adjusting its operating parameters. Such operating parameters include: ... data packet size ... The base transceiver is also responsive ... in determining whether to modify current data packet sizes”). Thus, it would have been

obvious to one having ordinary skill in the art at the time the invention was made, to implement the instant limitation, as taught by Mahany in the method of Varma because Varma teaches and suggests selecting different dynamic adaptation link parameters such as modulation scheme, symbol rate, error correction scheme and the like based on the channel(link) quality measurement for better throughput efficiency in general (Varma, Col 1 L18-22, L29-34, Abstract, Col 5 L16-26) and Mahany teaches and suggests the benefit of using communication link adaptive parameters such as to determine whether to modify current data packet sizes based on the channel(link) quality measurement for better quality of transmission or throughput efficiency (Mahany, Abstract). Furthermore it is well known in the art to adjust packet size based on the channel condition -see US 7095719 Abstract, US 20050220117 Para [0046])

6. Regarding claim 1 and 21, similarly analyzed as claim 22.

12. ***In re claim 1, Varma in view of APA and Mahany discloses a demodulation method because under the principles of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claims, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification***

for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. In re King, 801 F.2d 1324,231 MPEP 2112.02”

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ZEWDU KASSA whose telephone number is (571)270-5253. The examiner can normally be reached on Monday - Friday (7:30 - 5:00).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Chieh can be reached on 571 272 3042. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

zk

/David C. Payne/

Supervisory Patent Examiner, Art Unit 2611